

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.26718 OF 2014

Mrs. Sonia Rajpal Singh : Petitioner
versus
**Sampark Marketing and Advertising
Solutions Pvt. Ltd. and ors.** : Respondents.

**Mr. Ashok M Saraogi for the Petitioner.
Mr. K H Modi i/by Mr. Jaising G Gaikwad for the Respondent No.1.**

**CORAM : R. M. SAVANT, J.
DATE : 08th September 2015**

P.C.

1 The order dated 28/08/2014 passed by the learned Judge of the City Civil Court, Greater Bombay rejecting the Chamber Summons No.1136 of 2014 filed by the Petitioner herein is taken exception to by way of the above Writ Petition.

2 The said Chamber Summons was filed for lifting of the attachment of Flat No.302 situated in Golden Empire Co-operative Housing Society, Mira-Bhayander Road, Opposite Mira Road, Dist. Thane which has been attached pursuant to the Execution Application No.105 of 2014. The said application was filed for execution of the order passed in the suit being Summary Suit No.660 of 2008 filed by the Respondent No.1 herein initially for recovery of the amount of Rs.67,61,522/- with further interest at the rate of 18% per annum on the principal amount of Rs.38,76,878/-. It seems that the plaint

thereafter came to be amended and the total amount claimed was reduced to Rs.45,74,716/-.

3 It seems that the Defendant No.3 who is alleged to be the Managing Director of the original Defendant No.1 and the Proprietor of the original Defendant No.2 was absconding and a proclamation was issued against him and the Flat in question i.e. Flat No.302, situated at Golden Empire CHS, Mira Bhayander Road, Opp. Mira Road, District Thane was sealed in the proceedings initiated by the Respondent No.1 under Section 138 of the Negotiable Instruments Act against the Defendant No.3 i.e. Dinesh Lakra. It appears that thereafter the said Dinesh Lakra presented himself and applied for a bail which bail came to be granted to the said Dinesh Lakra by the Trial Court i.e. the Metropolitan Magistrate's Court. It seems that thereafter in view of the said Dinesh Lakra presenting himself, an application was filed for lifting the attachment of the flat in question before the Trial Court i.e. the learned Metropolitan Magistrate Court No.28, Esplanade, Mumbai which is as yet pending. However, in so far as the Summary Suit is concerned, it seems that a conditional leave came to be granted to the Defendant No.3 on the deposit of Rs.45,74,716/- by the order dated 06/01/2015 which was corrected by the order dated 09/02/2015 so as to incorporate the correct amount of Rs.45,74,716/- from the original amount of Rs.67,61,522/-. On the matter coming to this Court by way of a Revision being Civil Revision Application

No.87 of 2015, the said order was maintained by this Court by order dated 20/03/2015. Against the said order dated 20/03/2015, the matter was carried to the Apex Court by way of SLP (Civil) No.12575 of 2015. The said SLP was disposed of by the order dated 13/07/2015 by the Apex Court by recording the statement made on behalf of the learned counsel appearing for the Defendants including the said Dinesh Lakra that they would deposit an amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs) with the Trial Court. The adjudication of the instant Chamber Summons by the impugned order dated 28/08/2014 has therefore taken place prior to the order dated 13/07/2015 passed by the Apex Court.

4 The learned counsel appearing on behalf of the Petitioner herein seeks to place reliance on the said order of the Apex Court dated 13/07/2015 in pursuit of the relief that the attachment be lifted. Since the Trial Court i.e. the learned Judge of the City Civil Court, Greater Bombay has adjudicated the instant Chamber Summons on the facts as they were prevailing on 28/08/2014 and since the order dated 13/07/2015 has come thereafter, in my view, without going into the rival contentions of the parties in respect of the impact that the order of the Apex Court would have, it would be just and proper if the Petitioner is granted liberty to file a fresh Chamber Summons for lifting of the attachment based on the subsequent fact of the order dated 13/07/2015 passed by the Apex Court. The learned counsel appearing for the Petitioner

Shri Saraogi on instructions states that the Petitioner would file such an application i.e. a Chamber Summons. Needless to state that if any such Chamber Summons is filed, the same would be considered on its own merits and in accordance with law and it is clarified that the contentions of the parties have not been gone into and it is for the Trial Court to take into consideration the said contentions. Needless to further state that the said adjudication would be uninfluenced by the impugned order. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order.